

## Office of Thrift Supervision, Treasury

## § 550.10

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AUTHORITY: 12 U.S.C. 1462a, 1463, 1464.

SOURCE: 62 FR 67703, Dec. 30, 1997, unless otherwise noted.

### § 550.10 What regulations govern the fiduciary operations of savings associations?

(a) *Federal savings associations.* A Federal savings association ("you") must

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conduct its fiduciary operations in accordance with 12 U.S.C. 1464(n) and this part.

(b) *State-chartered savings associations.*

(1) A State-chartered savings association must conduct its fiduciary operations in accordance with applicable State law, and must exercise its fiduciary powers in a safe and sound manner. To ensure safe and sound operations, State-chartered savings associations and their subsidiaries should follow the standards for the exercise of fiduciary powers in this part.

(2) The OTS will monitor the fiduciary operations of State-chartered savings associations and their subsidiaries to ensure that those operations are conducted in a safe and sound manner. The OTS may object to practices that deviate materially from the practices described in this part, and may restrict or prohibit activities that threaten the safety and soundness of a State-chartered savings association.

## § 550.20 What are fiduciary powers?

Fiduciary powers are the authority that OTS permits you to exercise under 12 U.S.C. 1464(n).

[67 FR 76298, Dec. 12, 2002]

## § 550.30 What fiduciary capacities does this part cover?

You are subject to this part if you act in a fiduciary capacity, except as described in subpart E of this part. You act in a fiduciary capacity when you act in any of the following capacities:

- (a) Trustee.
- (b) Executor.
- (c) Administrator.
- (d) Registrar of stocks and bonds.
- (e) Transfer agent.
- (f) Assignee.
- (g) Receiver.
- (h) Guardian or conservator of the estate of a minor, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

(i) A fiduciary in a relationship established under a State law that is substantially similar to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act as published by the American Law Institute.

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(j) Investment adviser, if you receive a fee for your investment advice.

(k) Any capacity in which you have investment discretion on behalf of another.

(l) Any other similar capacity that the OTS may authorize under 12 U.S.C. 1464(n).

## § 550.40 When do I have investment discretion?

(a) *General.* You have investment discretion when you have, with respect to a fiduciary account, the sole or shared authority to determine what securities or other assets to purchase or sell on behalf of that account. It does not matter whether you have exercised this authority.

(b) *Delegations.* You retain investment discretion if you delegate investment discretion to another. You also have investment discretion if you receive delegated authority to exercise investment discretion from another.

## § 550.50 What is a fiduciary account?

A fiduciary account is an account that you administer acting in a fiduciary capacity.

## § 550.60 What other definitions apply to this part?

*Activities ancillary to your fiduciary business* include advertising, marketing, or soliciting fiduciary business, contacting existing or potential customers, answering questions and providing information to customers related to their accounts, acting as liaison between you and your customer (for example, forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property. This list is illustrative and not comprehensive. Other activities may also be “ancillary activities” for purposes of this definition.

*Affiliate* has the same meaning as in 12 U.S.C. 221a(b). For purposes of this part, substitute the term “Federal savings association” for the term “member bank” whenever it appears in 12 U.S.C. 221a(b).

*Applicable law* means the law of a State or other jurisdiction governing